

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HERBERT M. BELLINGER, JR.,

Plaintiff,

No. CIV S-02-2335 LKK GGH P

vs.

DEPUTY ALLBEE, et al.,

Defendants.

ORDER

On April 25, 2005, the court recommended that defendants' December 17, 2004, summary judgment motion be granted in part and denied in part. In considering defendants' motion, the court construed plaintiff's December 23, 2004, summary judgment motion, as an opposition to defendants' motion.

The court did not treat plaintiff's December 23, 2004, motion as a cross-motion because it was untimely. Pursuant to the October 13, 2004, order, the motion cut-off date was December 17, 2004. The proof of service attached to plaintiff's December 23, 2004, summary judgment motion states that plaintiff "placed" his motion in the "United States Mails" on December 3, 2004. Plaintiff does not benefit from the "mailbox rule" because he mailed his motion directly rather than delivering it to jail authorities for forwarding to the court. See Houston v. Lack, 487 U.S. 266, 273, 108 S.Ct. 2379 (1988).

1 Accordingly, IT IS HEREBY ORDERED that plaintiff's December 23, 2004,
2 summary judgment is construed as an opposition to defendants' December 17, 2004, summary
3 judgment motion.

4 DATED: 5/3/05

6 /s/ Gregory G. Hollows

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8 GREGORY G. HOLLOWS
9 UNITED STATES MAGISTRATE JUDGE

9 ggh:kj
10 bell2335.ord